

JAMIE LYNN GALLIAN
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Debtor, Defendant, IN PRO PER

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION

Case No. 8:21-BK-11710-SC

Adv. 8:21-ap-01096-SC

In re

JAMIE LYNN GALLIAN

Debtor

JANINE JASSO, ESQ.
an individual

Plaintiff

vs.

JAMIE LYNN GALLIAN

Defendant

Before the *Honorable Scott C. Clarkson*
**NOTICE OF AND MOTION TO DISMISS
COMPLAINT:**

- 1. TO DETERMINE DISCHARGEABILITY OF
CIVIL ATTORNEY FEES DEBT SEPARATE
AND ASIDE OF FEES/FINE PURSUANT TO
§523(A)(7);**
**ARGUMENT PRESENTED IN concurrent MSJ FOR
DISMISSAL OF 1ST CAUSE OF ACTION §523(a)(7)**
- 2. TO DETERMINE NONDISCHARGEABILITY
OF DEBT PURSUANT TO 11 U.S.C. SECTION
523(a)(2)(A);**
- 3. FOR DENIAL OF DISCHARGE
PURSUANT TO 11 U.S.C. SECTION 727(a)(3);**
- 4. FOR DENIAL OF DISCHARGE PURSUANT
TO 11 U.S.C. SECTION 727(a)(4);**
- 5. FOR DENIAL OF DISCHARGE PURSUANT
TO 11 U.S.C. SECTION 727(a)(5).**

[F.R.C.P. §§9(b), 12(b)(6); F.R.B.P. §§7009, 7012

Date: 11-15-2022

Time: 1:30pm

Courtroom 5C ZoomGov

Location: 411 W. Fourth Street, Santa Ana, CA 92701

TO PLAINTIFF JANINE JASSO, ESQ :

PLEASE TAKE NOTICE that on 11-15-2022 at 1:30 PM in the Courtroom of the

Honorable Scott C. Clarkson, United States Bankruptcy Judge, Courtroom 5C located at the

United States Bankruptcy Court, Central District of California, Ronald Reagan Federal Building and Courthouse, located at 411 West Fourth Street, Suite 5060, Santa Ana, CA 92701-4593, Debtor and Defendant **JAMIE LYNN GALLIAN** (“Defendant”) moves for an order dismissing the *Adversary Complaint*:

1. *To Determine Nondischargeability of Debt Pursuant to 11 U.S.C. Section §523(a)(7);*
2. *To Determine Nondischargeability of Debt Pursuant to 11 U.S.C. Section §523(a)(2)(A);*
3. *For Denial of Discharge Pursuant to 11 U.S.C. Section 727(a)(3);*
4. *For Denial of Discharge Pursuant to 11 U.S.C. Section 727(a)(4)*
5. *For Denial of Discharge Pursuant to 11 U.S.C. Section 727(a)(5);*

(“Original Complaint”) filed 10-18-2021 Doc-1 [unsigned] herein by Plaintiff JANINE JASSO, ESQ. (“Plaintiff”). A second complaint was filed 10-19-2021, Doc-3; a FAC was filed 11-16-2021, Doc-6, was without leave of court. The FAC added new causes of action and facts unrelated to the “original [unsigned] complaint” Doc-1. Doc -3 was filed after the time to object to discharge 4007.

The *Motion to Dismiss* will be based on this Notice, on the attached Memorandum of Points and Authorities, on all the papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing of the *Motion*.

Defendant brings this *Motion to Dismiss* pursuant to F.R.C.P. §§9(b), 12(b)(6), and F.R.B.P. § 7009, 7012, on the grounds that Plaintiff has failed to state a claim upon which relief may be granted. Plaintiff’s Complaint fails to meet even the minimal elements of 11 U.S.C. §523(a)(2) and § 727(a). Plaintiff attempts to allege causes of action by providing an excessive listing of vague, redundant, and ultimately confusing assertions of fact (many of which only marginally qualify as facts), then, failing to apply those assertions to the elements of any given cause of action, makes only sweeping conclusory declarations of Defendant’s liability. As a result, the pleading defies a basis for drawing any reasonable inference that Defendant is responsible for the misconduct alleged, let alone any of the injuries or damages which Plaintiff claims to have suffered. It is not the responsibility of Defendant, and certainly not the responsibility of the Court, to decipher the relevant facts from the referenced narrative in order to construct Plaintiff’s claims for relief.

1 Pursuant to Local Bankruptcy Rule 9013-1, any objection or response to this Motion must
2 be stated in writing, filed with the Clerk of the Court and served on Defendant at the
3 address located in the upper left hand corner no later than fourteen days prior to the
4 hearing. Failure to so state, file and serve any opposition may result in the Court failing to cons
5 ider the same.

6
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8 DATED: November 7, 2022

Respectfully submitted,

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JAMIE LYNN GALLIAN

Debtor and Defendant,

In Pro Per
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13 **1. MEMORANDUM OF POINTS & AUTHORITIES**

14 **a. BACKGROUND**

15 On 07/09/2021, the Debtor commenced this voluntary Chapter 7 bankruptcy.

16 On 10/18/2021, Plaintiff commenced this Adversary Complaint. 8:21-ap-01096, filing an
17 [unsigned] Complaint with the Clerk of the Court. Doc-1.

18 On 10/19/2021, Plaintiff filed a second complaint after 4:00pm, with the Clerk of the
19 court. Plaintiff failed to serve debtor, in pro per, with the second 10-19-2021 "signed copy" of the
20 complaint. Doc 3

21 On November 16, 2021 Plaintiff filed a First Amended Adversary Complaint, ("FAC")
22 added and expanding causes of actions and adding facts, not relating back to the original
23 [unsigned] complaint filed 10-18-2021. Doc-1, subsequently re-filed on October 19, 2021. Doc-3
24 Plaintiff, a licensed California Attorney, failed to file a Notice of and Motion to \Amend
25 Adversary Complaint Doc-3 and obtain leave of court and/or the courts permission to file a late
26 adversary complaint broadening the causes of actions not relating or appearing in the original
27 unsigned complaint Doc-1. Moreover, Plaintiff, Janine B. Jasso, Esq. is a Member of the
28 California State Bar, SBN 170188 and has come into this court with unclean hands, mislead the
court on several points of fact in the original complaint and the First Amended Complaint.

1 The Third Cause of Action is for Denial of Defendants' Discharge Pursuant to 11 U.S.C. §727(a)
2 (3); The Fourth Cause of Action is for Denial of Defendants' Discharge for False Oath Pursuant to
3 11 U.S.C. §727(a)(4)(A); The Fifth Cause of Action is for Denial of Defendants' Discharge for
4 Failure to Explain Losses Under 11 U.S.C. §727(a)(5).

5
6 Plaintiff's Second Cause based in part on Unit 376, Tract 10542 Unit 4, defendant a
7 bona fide purchaser 11-1-18, Compl ¶ 26 for value of a 2014 Skyline Custom Villa
8 manufactured home under an unexpired 80 yr Ground Leasehold Assignment from seller
9 Lisa Ryan, of approximately 35 years remaining on the unexpired ground lease, pursuant to
10 Health & Safety Code §18551. Seller Lisa Ryan, obtained the use of Lot 376 in 2006.
11 The Ground Space, Lot 376, under the 2014 Skyline Custom Villa installed by permit from
12 the Department of Housing and Community Development in 9-2014, purchased by defendant
13 11-1-2018, based upon on an allegation, Compl ¶52, FAC ¶84 that Defendant engaged in an
14 fraudulent scheme to place her most substantial asset, the condominium Unit 53 located
15 at 4476 Alderport, also in Tract 10542, out of reach of Plaintiff, who, as an individual
16 Board member, was in the process of obtaining an attorney's fees award in excess of
17 \$40,000.00, for successfully defending Debtor's civil cross-claims. Plaintiff, alleges debtor
18 conducted her personal affairs through her personal account and business bank
19 account held under the name of J-Sandcastle Co LLC, her sole member, alter ego
20 company, J-Sandcastle Co, LLC., (the "Alter Ego Company") in an effort to shield herself
21 from collection from judgments that that were not even entered until 2019. Plaintiff, a Board
22 Member and former attorney for The Huntington Beach Gables Homeowners
23 Association, whom obtained a \$3,070.00 judgment against Debtor on September
24 27, 2018, and none against J-Sandcastle Co LLC or J-Pad, LLC. (FAC ¶ 45).
25 This claim is properly dismissed as Plaintiff is not the Chapter 7 Trustee and therefore
26 lacks the standing to raise a claim under 11 U.S.C. § 548.

27 While the Plaintiff claims: "Plaintiff was in the process of obtaining an attorney
28 fees award from defending against a cross claim" the basic elements of 11 U.S.C.
§523(a)(2)(A) are nowhere to be found in the Complaint, violating the
requirements of Federal Rule of Civil Procedure 9(b), made applicable to
bankruptcy by Federal Rule of Bankruptcy Procedure 7009. The Complaint
does not identify: (1) a representation of fact by the debtor, (2) that was material, (3)
that the debtor knew at the time to be false, (4) that the debtor made with the
intention of deceiving the creditor, (5) upon which the creditor relied, (6) that the
creditor's reliance was reasonable, and (7) that damage proximately resulted from the
misrepresentation.

Plaintiff's Second Cause of Action is for Denial of Defendants' Discharge Pursuant to 11

1 U.S.C. §727(a)(2)(A)) is based on an allegation that: "Defendant engaged in an ongoing
2 scheme to avoid, delay, hinder and defraud Plaintiff and her creditors, who had obtained
3 judgments against her by concealing and transferring property, that was rightfully hers, to her
4 Alter Ego Companies to prevent her creditors from collecting on their debts. (Complaint ¶ 42).
5 The Complaint is silent as to what specific assets were transferred to Alter Ego Companies -
6 and the dates of said alleged transfers - to prevent her creditors from collecting on a judgment of
7 \$319,000.00 that didn't enter until May 2019. Ironically, of the few assets that Plaintiff does
8 define as having been sold (ie., transferred), they occurred **beyond** the one-year pre-filing period.

9 Plaintiff's Third Cause of Action is for Denial of Defendants' Discharge for False Oath
10 Pursuant to 11 U.S.C. §727(a)(3) is based on an allegation that the Defendant omitted assets in her
11 bankruptcy, and failed to disclose said assets in her 341(a) examination - yet the
12 Complaint acknowledged that the Debtor amended her bankruptcy schedules at least nine
13 times, correcting and remedying what she inadvertently omitted beforehand. The Complaint
14 cites no facts that this was more than an innocent and inadvertent oversight, and no facts were
15 cited in the Complaint that this was a knowingly and fraudulently made false oath.

16 Plaintiff's Fourth Cause of Action is for Denial of Defendants' Discharge for Failure to
17 Explain Losses Under 11 U.S.C. §727(a)(5) is based on an allegation that the Defendant failed to
18 explain any loss of assets or deficiency of assets to meet the debtor's liabilities - yet the Complaint
19 acknowledged that the Debtor amended her bankruptcy schedules nine times, correcting,
20 explaining, and remedying what she inadvertently omitted beforehand. The Complaint cites no
21 facts of any asset that remains unaccounted for - since the amendments, all were accounted
22 for and explained. And since at this point in time, it is still "before the determination of a denial of
23 discharge" Defendant has successfully explained all of her previous errors by virtue of her nine
24 amendments filed solely In Pro Per.

25 Plaintiff's Fifth Cause of Action is for Alter Ego - which is not a valid cause of action
26 under 11 U.S.C. §523(a) and/or 11 U.S.C. §727(a). It's not even a valid cause of action under
27 California law.

28 Accordingly, the task has fallen upon Defendant to bring the instant *Motion to Dismiss*, for

1 failure to state a claim upon which relief can be granted pursuant to Rule 7012 of the
2 Federal Rules of Bankruptcy Procedure, incorporating by reference, Rule 12(b)(6) of the
3 Federal Rules of Civil Procedure in order to demonstrate that Plaintiff's pleading is filled
4 with superfluous matter, alleging vague unspecified conduct, damages, and events which are so
5 remote in time as to be time-barred and allegations which are mere conclusions.

6 b. **ARGUMENT**

7 A complaint must allege sufficient factual matter, which if accepted as true would "state a
8 claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949
9 (2009), quoting, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially
10 plausible when a court can draw a reasonable inference that the defendant is liable for misconduct.
11 *Id.* The complaint must state a claim for relief that is plausible in order to survive a motion to
12 dismiss. *Ashcroft v. Iqbal*, 129 S. Ct. at 1950. A dismissal without leave to amend should not be
13 granted unless "the complaint could not be saved by any amendment." *Polich v. Burlington*
14 *Northern, Inc.*, 942 F.2d 1467, 1472 (9th Cir. 1991) (citation omitted).

15 Federal Rules of Civil Procedure, Rule 12(b)(6) provides, in pertinent part:

16 Every defense, in law or fact, to a claim for relief in any pleading, whether a claim,
17 counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive
18 pleading thereto if one is required, except that the following defenses may at the option
19 of the pleader be made by motion: ... (6) failure to state a claim upon which relief
20 can be granted

21 Courts have increasingly recognized that under appropriate circumstances these motions are
22 useful and even necessary tools for disposing of insupportable claims. Thus, while the Court, in
23 deciding a motion to dismiss, must accept as true all material allegations of a complaint and
24 construe them in the light most favorable to the plaintiff. *N.L. Industries, Inc. v. Kaplan*, 792 F.2d 896,
25 898 (9th Cir. 1986). "To survive a motion to dismiss, a complaint must contain sufficient
26 factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v.*
27 *Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
28 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court
to draw the reasonable inference that the defendant is liable for the misconduct alleged." (*Ibid.*) In
other words, the relevant

1 question for purposes of a motion to dismiss for failure to state a claim is “whether, assuming the
2 factual allegations are true, the plaintiff has stated a ground for relief that is plausible.” Ashcroft,
3 *supra*, 129 S.Ct. at 1959. However, the Court need not accept conclusory allegations, unwarranted
4 deductions or unreasonable inferences. Western Mining Council v. Watt, 643 F.2d 618, 624 (9th
5 Cir. 1981), *cert. denied*, 454 U.S. 1031, 102 S.Ct. 567, 70 L.Ed. 2d 474 (1981). Nor need a court
6 assume that Plaintiff can prove facts different from those it has alleged. Associated Gen. Contractors
7 of Calif. v. California State Council of Carpenters 459 U.S. 519, 526 (1983). As one court has put
8 it, courts need not “swallow the plaintiff’s invective hook, line, and sinker; bald assertions,
9 unsupportable conclusions, periphrastic circumlocutions, and the like need not be credited.” Aulson v.
10 Blanchard 83 F.3d 1, 3 (1st Cir. 1996).

11 Federal Rule of Civil Procedure 12(b)(6), made applicable to bankruptcy by Federal Rule of
12 Bankruptcy Procedure 7012, is similar to the common law general demurrer in that it tests the legal
13 sufficiency of the claim or claims stated in the Plaintiff’s unsigned complaint Doc 1 and First
14 Amended Complaint Doc 6, without leave of court to amend. A court must decide whether the facts
15 alleged, if true, would entitle the plaintiff to some form of legal remedy. *Conley v Gibson*, 355 U.S.
16 41, 45-46, 78 S.Ct. 99, 102 (1957); De La Cruz v Tormey 582 F.2d 45, 48 (9th Cir. 1978).

17 Therefore, a Rule 12(b)(6) dismissal motion is proper where there is an absence of
18 sufficient facts alleged under a cognizable legal theory. Balistreri v. Pacifica Police Dept, 901 F.2d
19 696, 699 (9th Cir. 1990); Graehling v. Village of Lombard, III, 58 F.3d 295, 297 (7th Cir. 1995). If
20 a critical threshold element is missing from the Plaintiff’s Complaint, a motion to dismiss under
21 Rule 12(b)(6) must be granted. This is precisely the problem with Plaintiff’s Unsigned Complaint
22 and First Amended Complaint - alleged facts are not stated with the requisite specificity.

23 i. **PLAINTIFF’S COMPLAINT IS PROPERLY DISMISSED PURSUANT**
24 **TO F.R.C.P. §§9(B), 12(B)(6) AND F.R.B.P. §§7009, 7012**

25 (1) **PLAINTIFF’S 2nd CAUSE OF ACTION FOR FRAUD UNDER**
26 **11 U.S.C. §523(A)(2)(A) IS PROPERLY DISMISSED**

27 The holding in In re Rubin, 875 F.2d 755, 759 (9th Cir., 1989) provides:

28 The elements of a claim for fraudulent misrepresentation under section 523(a)(2)(A)

1 are: (1) a representation of fact by the debtor, (2) that was material, (3) that the debtor
2 knew at the time to be false, (4) that the debtor made with the intention of deceiving
3 the creditor, (5) upon which the creditor relied, (6) that the creditor's reliance was
4 reasonable, and (7) that damage proximately resulted from the misrepresentation.

5 To support a 11 U.S.C. §523(a)(2)(A) action, Plaintiff must establish that Defendant made
6 a false representation with respect to existing and ascertainable facts. *In re Fravel*, 143 Bankr. 1001
(Bankr. E.D.Va.1992); *In re Schwartz & Meyers*, 130 Bankr. 416 (Bankr. S.D.N.Y.1991).

7 Section 523(a)(2)(A) of the Bankruptcy Code provides in pertinent part that "A discharge
8 under this title does not discharge an individual debtor from any debt or money, property, services,
9 or an extension, renewal or refinancing of credit to the extent obtained by false pretenses, or false
10 representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial
11 condition." A claim under this "fraud" exception requires that the claim satisfy the heightened
12 pleading requirements for fraud pursuant to Fed. R. Civ. P. 9(b). See *In re Jacobs*, 403 B.R. 565, 574
13 (Bankr. N.D. Ill. 2009)(citations omitted), as well as *In re Kanaley*, 241 B.R. 795, 803 (Bankr.
14 S.D.N.Y. 1991).

15 Federal Rule of Civil Procedure Rule 9(b) and Federal Rule of Bankruptcy Procedure 7009
16 states "In alleging fraud, a party must state with particularity the circumstances constituting fraud or
17 mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally."
18 While intent or knowledge may be averred generally, however, the plaintiff must still plead the events
19 claimed to give rise to an inference of intent or knowledge *Devaney v. Chester*, 813 F.2d 566, 568 (2d
20 Cir. 1987), which may be accomplished by pleading facts consistent with certain well established
21 "badges of fraud." *In re Sharp Int'l Corp.*, 403 F.3d 43, 56 (2d Cir. 2004). In addition to providing a
22 defendant with fair notice of the claim, Rule 9(b) serves the purpose of protecting a defendant from
23 harm to his or her reputation or good-will by unfounded allegations of fraud, and by reducing the
24 number of strike suits. *In re Actrade Financial Technologies Ltd.*, 337 B.R. 791, 801 (Bankr.
25 S.D.N.Y. 2005).

26 Those three terms, as used in section 523(a)(2)(A), embody different concepts in Congress'
27 use of the disjunctive, or evidence an intent to deny a discharge under any such term." The term "false
28 pretenses" is defined as conscious, deceptive or misleading conduct, calculated to obtain or deprive

1 another of property. It includes an implied misrepresentation or conduct intended to create a false
2 impression. The term "false representation" requires that the plaintiff present proof that the defendant
3 (1) made a false or misleading statement, (2) with the intent to deceive, and (3) to cause the plaintiff
4 to turn over money or property to the defendant. The term "actual fraud" requires proof of the five
5 fingers of fraud, or five elements of fraud, which are (1) a misrepresentation, (2) fraudulent intent or
6 scienter, (3) intent to induce reliance, (4) justifiable reliance, and (5) damage. A reckless
7 representation or silence regarding a material fact may in some cases constitute the requisite falsity,
8 and in certain cases a causal link, as opposed to actual reliance, may establish the creditor's injury.
9 Although the statute could conceivably be read as providing that one's debt may not be subject to the
10 discharge if one merely benefits from someone else's fraud, in keeping with the Congressional purpose
11 behind section 523 that is not the approach taken by the courts. The case law requires fraudulent
12 conduct, false pretenses, or false representations on the part of the particular debtor in question, either
13 directly or by imputation.

14 Nothing in the Plaintiffs' complaint would satisfy Federal Rule of Civil Procedure Rule 8 and
15 Federal Rule of Bankruptcy Procedure 7008, let alone FRCP 9(b), as to whether a claim has been
16 alleged under Bankruptcy Code section 523(a)(2)(A) for fraud, false pretenses or
17 misrepresentation. The (Complaint ¶ 52) laments: "Debtor engaged in a fraudulent scheme to
18 place her most substantial asset, the condominium located at 4476 Alderport, Unit 53, out of reach
19 of Plaintiff, who, as an individual Board Member, was in the process of obtaining an attorney's fees
20 award in excess of \$40,000.00 for successfully defending Debtor's civil cross claims" but clearly
21 no misrepresentation by Defendant has been alleged here, or any intent on her part to induce
22 reliance thereon. It not only does not plead sufficient "badges of fraud" as to Defendant, it also
23 does not plead any facts, as opposed to conclusions, describing her fraud. Without more, therefore,
24 the complaint's claim under section 523(a)(2)(A) of the Bankruptcy Code is properly dismissed.

25 Further, Plaintiff's Second Cause of Action for Money Obtained by False Pretenses and
26 Actual Fraud Pursuant to 11 U.S.C. §523(a)(2)(A) is based on an allegation that Defendant, in her
27 operation of her various businesses including JP and JSC, operated these business as her alter ego
28 since October 18, 2018, (the "Alter Ego Companies") in an effort to shield herself from personal
liability while at the same time using funds of these business for personal purpose.(Complaint ¶ 57).

1 This claim is properly dismissed as Plaintiff is not the Chapter 7 Trustee and therefore lacks the
2 standing to raise a claim under 11 U.S.C. § 548.

3 11 U.S.C. § 548 gives the “trustee the ability to avoid any transfer of interest of the debtor
4 in property, or any obligation incurred by the debtor that was made or incurred within one year
5 before the date of the filing of the petition”. “A trustee may set aside a transfer of an interest of the
6 debtor if the debtor made the transfer ...”*In re Cohen*, 300 F.3d 1097 (9th Cir. 2002). The court
7 continued “A trustee's right to recover differs dramatically depending on which section is
8 applicable” See also *Schafer v. Las Vegas Hilton Corp. (In re Video Depot)*, 127 F.3d 1195,
9 1197-98 (9th Cir. 1997). “Section 548(a)(2) of the Bankruptcy Code sets forth the avoiding powers
10 of a **bankruptcy trustee** as they relate to fraudulent transfers of a debtor's interest in
11 property.” (Emphasis added) *In re BFP*, 974 F.2d 1144 (9th Cir.1992).

12 11 U.S.C. § 544 like Section 547 also vests power in the Trustee for the benefit of the
13 estate. Like section 547 it specifically states rights for the trustee it clearly states “The **trustee**
14 shall have... the rights and powers of avoidance of any transfer of property of the debtor or any
15 obligation incurred by the debtor...” (Emphasis added).

16 “Section 544 of the Bankruptcy Code, the "strong-arm clause," grants a trustee in
17 bankruptcy "the rights and powers of a hypothetical creditor who obtained a judicial lien on all of
18 the property in the estate at the date the petition in bankruptcy was filed.” *In re Commercial W.*
19 *Fin. Corp.*, 761 F.2d 1329, 1331 n.2 (9th Cir. 1985) (citing 11 U.S.C.§ 544(a)(1)). "One of
20 these powers is the ability to take priority over, or `avoid' security interests that are unperfected
21 under applicable state law" Id. Avoiding such interests relegates them to the status of a
22 general unsecured claim. See 5 *Collier on Bankruptcy* ¶¶ 544.02, 544.05 (Lawrence P. King ed.,
23 15th ed. rev. 2000).*Neilson v. Chang*, 253 F.3d 520 (9th Cir. 2001).

24 F.The rule is clear, the rights which Plaintiff seeks to enforce belong solely to the trustee, they are
25 not Plaintiff’s to exercise.

26 (2) **PLAINTIFF’S 3rd CAUSE OF ACTION UNDER 11 U.S.C.**
27 **§727(a)(2)(A) IS PROPERLY DISMISSED**

28 11 U.S.C. §727(a)(2)(A) - Discharge provides:

1 (a) The court shall grant the debtor a discharge, unless—
2 (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the
3 estate charged with custody of property under this title, has transferred, removed,
4 destroyed, mutilated, or concealed, or has permitted to be transferred, removed,
5 destroyed, mutilated, or concealed—
6 (A) property of the debtor, within one year before the date of the filing of the petition
7 [Emphasis added]

8 Two elements comprise an objection to discharge under 11 U.S.C. § 727(a)(2)(A): 1) a
9 disposition of property by or at the sufferance of the debtor by transfer, removal, destruction,
10 mutilation, or concealment; and 2) a subjective intent on the debtor's part to hinder, delay or defraud
11 a creditor through the act disposing of the property. Both elements must take place within 1-year of
12 the Petition Date of 7-09-2021 (the one-year pre-filing period); acts and intentions occurring before
13 this period are forgiven. *In re Lawson*, 122 F3d 1237 (CA9 1997).

14 This section is construed liberally in favor of the debtor and strictly against those objecting
15 to discharge. Before a court can refuse a discharge under 11 U.S.C. § 727(a)(2)(A), it must be shown
16 that there was an actual transfer of valuable property belonging to the debtor which reduced the
17 assets available to the creditors and which was made with fraudulent intent. *In re Garcia*, 168 B.R.
18 403 (D. Ariz. 1994).

19 Plaintiff's Third Cause of Action is for Denial of Defendants' Discharge Pursuant to 11
20 U.S.C. §727(a)(2)(A)) is based on an allegation that: "Defendant engaged in an ongoing scheme to
21 avoid, delay, hinder and defraud their creditors, including Plaintiff, who was in the process of
22 obtaining judgments against by concealing and transferring property, that was rightfully hers, to her
23 Alter Ego Companies to prevent plaintiff from collecting on debts. (Complaint ¶ 42).

24 The Complaint is silent as to what specific assets were transferred to Alter Ego Companies -
25 and the dates of said alleged transfers - to prevent the only creditor, Huntington Beach Gables
26 Homeowners Association from collecting on their September 2018, \$3070.00 judgment.

27 Ironically, of the single asset that Plaintiff does define as having been sold 4476 Alderport Unit
28 53, (ie., transferred), occurred **beyond the one-year pre-filing period** (7-9-2020 - 7-9-2021).
Complaint ¶ 24, FAC ¶35 & 36 identifies real property located at 4476 Alderport Unit 53
Huntington Beach, CA., 92649 that was sold to Mr. Nickel on October 31, 2018

1 real property that was sold by the Debtor on 10-31-2018 (beyond the one-year pre-filing period
2 (7-9-2020 -7-9-202)).

3 Complaint ¶ 11; 24; FAC ¶13, 35, 36 identifies (1) real property (4476 Alderport
4 Huntington Beach, CA; 92649) that was once owned by the Debtor, but is silent as to
5 whether it was transferred within the one-year pre-filing period (7-9-2020 - 7-9-2021).

6 Complaint ¶ 26 identifies (1) 2014 Manufactured Home "on or about November 1, 2018,
7 Debtor purchased the Lisa Ryan's (sic) mobile home located at 16222 Monterey Lane, Space 376,"
8 but is silent as to whether it was transferred within the one-year pre-filing period (7-9-2020 -
9 7-9-2021).

Chattel	Transfer Date
2014 Skyline Custom Villa Complaint ¶30 FAC ¶ 50 (Transferred for \$225,000.00, 30-yr Manufacture Financing Secured Promissory Note)	Within 2 years of the Petition Date 11/16/2018 admittedly transferred within four years.
Complaint ¶32; FAC ¶ 57 2/26/2019 "Debtor and J-Sandcastle Co LLC, became the joint owners of J-Pad"	02/26/2019 admittedly transferred within four years. 01/2/2020 admittedly transferred within four years.
FAC¶ 58 1/8/2020, "Robert McLelland....became the sole owner of J-Pad"	01/29/2020 admittedly transferred within four years.
Complaint ¶34; FAC ¶1/29/20, J-Pad and Family Members of Debtor became owners of JSC.	

20 There is no factual allegation in the Complaint of any subjective intent on the Defendants' part
21 to hinder, delay or defraud a creditor, or any creditor, from 7-9-2020 - 7-9-2021.

22 Accordingly, Plaintiff's 3rd Cause of Action under 11 U.S.C. §727(a)(2)(A) is properly
23 dismissed.

24 (3) **PLAINTIFF'S 4th CAUSE OF ACTION UNDER 11 U.S.C.**

25 **§727(a)(4) IS PROPERLY DISMISSED**

26 **11 U.S.C. §727(a)(4)(A) - Discharge provides:**

27 (a) The court shall grant the debtor a discharge, unless (4) the debtor knowingly and
28 fraudulently, in or in connection with the case—

(A) made a false oath or account

1 A plaintiff seeking denial of a debtor's discharge under § 727(a)(4)(A) must prove that:
2 (1) [the debtor] made a statement under oath; (2) the statement was false; (3) [the debtor] knew the
3 statement was false; (4) [the debtor] made the statement with fraudulent intent; and (5) the
4 statement related materially to the bankruptcy case. Matter of Beaubouef, 966 F.2d 174, 178 (5th
5 Cir 1992), cited in In re Spitko, 357 B.R. at 312. Accord Keeney v. Smith (In re Keeney), 227 F.3d
6 679, 685 (6th Cir. 2000); Moore v. Strickland (In re Strickland), 350 B.R. 158, 163 (Bankr. D. Del.
7 2006). See also In re Zimmerman, 320 B.R. at 806.

8 Not all omissions or errors, however, lead to denial of a discharge. A debtor that is merely
9 careless in preparing schedules and statements or in testimony in connection with a case may
10 receive a discharge absent proof of fraudulent intent. Bauman v. Post (In re Post), 347 B.R. 104,
11 112 (Bankr. M.D. Fla. 2006); Estate of Harris v. Dawley (In re Dawley), 312 B.R. 765, 785
12 (Bankr. E.D. Pa. 2004). Further, a debtor who relies on the advice of counsel who is generally aware
13 of all relevant facts also will not be found to have made a false oath. In re Topper, 229 F.2d 691, 693
14 (3d Cir. 1956) cited in In re Georges, 138 Fed. Appx. 471, 472 (3d Cir. 2005); In re Dawley, 312 B.R.
15 at 787.

16 A party objecting to discharge under § 727(a)(4)(A) must prove by a preponderance of the
17 evidence that "the false oath [was] fraudulent and material." Swicegood, 924 F.2d at 232.

18 Plaintiff's Fourth Cause of Action is for Denial of Defendants' Discharge for False
19 Oath Pursuant to 11 U.S.C. §727(a)(4)(A) is based on an allegation that the Defendant omitted
20 assets in her bankruptcy, and failed to disclose said assets in her 341(a) examination - yet
21 the Complaint acknowledged that the Debtor amended her bankruptcy schedules several
22 times, correcting and remedying what she inadvertently omitted beforehand. In In re Beaubouef,
23 966 F.2d 174, 178 (5th Cir. 1992) the Court clearly stated that an opportunity to clear up
24 inconsistencies and omissions with amended schedules may be considered in analyzing findings of
25 actual intent to defraud); Gullickson v. Brown (In re Brown), 108 F.3d 1290, 1294-95 (10th Cir.
26 1997). Here, the Defendant voluntarily amended ((9-7-2021, 9-22-2021, 10-14-2021),
27
28

her Schedules and Statement of Financial Affairs before this Complaint was ever filed (10-18-2021-bk-Doc-28) or [ap-01096-[Doc-1] and ap-01096 10-19-2021 [Doc-3] and 11-16-2021 FAC [Doc-6] before she even knew that a 727 complaint was being filed against her. The Debtor seized her own opportunities to clear up any inconsistencies or omissions with amended Schedules and Statement of Financial Affairs demonstrating that she lacked actual intent to defraud.

Under the "Relations Back" Doctrine of F.R.C.P. 15, and F.R.B.P 7015, said amendments (1)9-07-2021 [Doc-15], (2) 9-22-2021 [Doc-16], (3) 10-14-2021 [Doc-22], (4) 11-16-2021 [Doc-37], (5) 11-22-21 [Doc-38], (6) 11-23-2021 [Doc-39], (7) 12-1-21 [Doc-42], (8) 3-11-2022 [Doc-72], (9) 3-15-22 [Doc-75] relate back to the initial bankruptcy filing of 7-09-2021, and therefore verify the integrity of this Defendant to maintain the accuracy of her Petition.

The Complaint itself acknowledged the Defendant's amendments (FAC ¶ 98 calling them "knowingly signed the schedules") and how they cured and remedied what was accidentally omitted in the initial filing:

Asset Allegedly Omitted in Initial Bankruptcy	Reality	Cured By Amendment
Complaint ¶	Defendants' Statement of Financial Affairs of 9-7-2021 [Doc 15] # 27, listed 2 LLC's: (1) J-Sandcastle Co (2) J-Pad, LLC See Complaint ¶ 25 &26	

<p>FAC ¶ 103: Defendant stted she had not sold, traded.... not list any transfers under Question 18 of her SOFA regarding transfers of property in the two (2) years preceding the Petition Date</p>	<p>There were no transfers to record of real estate within the two (2) years preceding the Petition Date (7-9-2019 -7-9-2021). Complaint ¶ 24 FAC ¶13 identifies real property located at 4476 Alderport Huntington Beach CA 92649 that was sold by the Debtor on 10-31-2018 (beyond the one-year pre-filing period (7-9-2020 - 7-9-2021)).</p>	

The Complaint cites no facts that the initial errors that were corrected by amendments were nothing more than innocent and inadvertent oversights, and no facts were cited in the Complaint that they were knowingly and fraudulently made false oaths.

The Complaint is silent as to whether the alleged concealed information would have or could have revealed assets available for creditors, especially if the assets in question were exempted . The Complaint does not allege that the Debtor made a false oath with fraudulent intent. In fact, the evidence will show if this case goes to trial that the Defendant was not adequately interrogated by her retained attorney [subsequently rescinded the retainer agreement] in the initial consultation and preparation of her schedules. Such reliance on an attorney can, with other evidence, demonstrate a lack of actual intent. *Parnes et al. v. Parnes(In re Parnes)*, 200 B.R. 710, 715(Bankr. N.D. Ga. 1996). Accordingly, Plaintiff's 4th Cause of Action under 11 U.S.C. §727(a)(4) is properly dismissed.

(5) **PLAINTIFF'S 5TH CAUSE OF ACTION UNDER 11 U.S.C. §727(a)(5) IS
PROPERLY DISMISSED**

The elements that comprise an objection to discharge under 11 U.S.C. § 727(a)(5): the debtor failed to explain satisfactorily, **before determination of denial of discharge** under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities. [Emphasis added]

Here, no trial has been scheduled, and Defendant explained satisfactorily, *before* determination of denial of discharge any loss of assets or deficiency of assets to meet the debtor's liabilities in her amendment of (1) 9-7-2021 [Doc-15], (2) 9-22-2021 [Doc-16-17], (3) 10-14-2021 [Doc-22], (4) 11-16-2021[Doc-37], (5) 11-22-2021 [Doc-38], (6) 11-23-2021[Doc-39], (7) 12-1-2021 [Doc-42], (8) 3-11-2022 [Doc-72], (9) 3-15-2022[Doc-75].

11 U.S.C. § 727(a)(5) does not explicitly require a creditor to call upon a debtor to explain a loss of assets prior to filing an adversary proceeding. A denial of discharge under § 727(a)(5) requires only that the debtor fail to explain a loss of assets “before determination of denial of discharge under this paragraph.” To require a creditor to seek an explanation from the debtor prior to filing an adversary hearing would add an additional and redundant layer of inquiry to § 727(a)(5). Accordingly, Plaintiff’s 5th Cause of Action under 11 U.S.C. §727(a)(5) is properly dismissed.

(5) **PLAINTIFF’S ALLEGED CAUSE OF ACTION FOR ALTER EGO PROPERLY
DISMISSED.**

In AHCOM, Ltd. v. Smeding,, 2010 WL 4117736, 2010 DJDAR 16125, Case No. 09-16020 (9th Cir. Oct. 21, 2010), the Ninth Circuit concluded, “California law does not recognize an alter ego claim or cause of action that will allow a corporation and its shareholders to be treated as alter egos for the purposes of all the corporation’s debts.” The Ninth Circuit overruled opinions relied on a California state court case, Stodd v. Goldberger, 73 Cal. App. 3d 827 (1977), for the proposition that California recognized a general alter-ego claim. Accordingly, Plaintiff’s alleged Cause of Action for alter ego is properly dismissed.

1 **c. CONCLUSION**

2 Plaintiff has not demonstrated, nor can she state a viable claim under any cause of action
3 in her Complaint; lacking liability and filed for the purpose of harassment, unreasonable delay,
4 and to obtain an unfair advantage in the *Nickel vs, Huntington Beach Gables Homeowners*
5 *Association, et al.* state court action filed by a bona fide purchaser of the Gallian real property
6 in October 2018.

7 Particularly evident when one examines the Complaint's claims, which consists of no
8 more than the gratuitous and bare-bones boilerplate conclusions minimally invoking this
9 Court's jurisdiction. For the above reasons, Defendant prays that this Court dismiss Plaintiff's
10 Complaint with prejudice, that Plaintiff not be granted leave to amend, that Plaintiff take
11 nothing by her Complaint, and that Defendants' alleged debt to Plaintiff be discharged.
12 Further, Defendant prays that this Court issue a finding of fact that the claims brought by
13 Plaintiff are dischargeable, and that pursuant to 11 U.S.C. §524(a)(1) and (2), this discharge
14 should also serve to void any future judgment to determine the personal liability of
15 Defendant and operate as a permanent injunction against any actions whether commenced
16 pre-petition or post-petition.


17 Further, Defendant prays that this Court award Defendant costs and reasonable
18 attorney's fees in an amount which will be ascertained, pursuant to 11 U.S.C. §523(d)
19 and Federal Rule of Bankruptcy Procedure 9011.

20 According, Defendant respectfully request that the Court enter an order granting the *Motion*
21 in its entirety, and providing for such other and further relief as this Court deems just.

22 I declare under penalty of perjury the foregoing is true and correct. Signed at Huntington
23 Beach CA. County of Orange.

24
25 DATED: November 7, 2022

Respectfully submitted.

26 
27 JAMIE LYNN GALLIAN
28 Debtor and Defendant,
IN PRO PER

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
5801 Skylab Road, Huntington beach, CA 92647

A true and correct copy of the foregoing document entitled: **MOTION TO DISMISS COMPLAINT: 1. TO DETERMINE NONDISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. § 523(a)(2)(A); 2. FOR DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(2)(A); 3. FOR DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(4)(A); 4. FOR DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(5); AND 5. FOR A FINDING OF ALTER EGO LIABILITY** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 11/7/2022, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Jeffrey I Golden (TR) lwerner@wglp.com; jlg@trusteesolutions.net; kadele@wglp.com

United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 11/7/2022 I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Judge Scott C. Clarkson
United States Bankruptcy Court
Central District of California
Ronald Reagan Federal Building and Courthouse
411 W. Fourth Street, Ste. 5060
Santa Ana, CA 92701-4593

Plaintiff Janine B. Jasso, Esq. **P.O. Box 370161**
Email Address: **El Paso, Tx**
j9_jasso@yahoo.com **79937**

☐ Service information continued on attached page

November 7, 2022 Robert McLelland
Date Printed Name

Robert McLelland
Signature bobwentflying@yahoo.com

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

ADDITIONAL SERVICE INFORMATION (If needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

Aaron E DE Leest on behalf of Trustee Jeffrey I Golden (TR)
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Robert P Goe on behalf of Plaintiff The Huntington Beach Gables Homeowners Association
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Eric P Israel on behalf of Trustee Jeffrey I Golden (TR)
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Mark A Mellor on behalf of Interested Party Courtesy NEF mail@mellorlawfirm.com, mellormr79158@notify.bestcase.com

Valerie Smith on behalf of Interested Party Courtesy NEF claims@recoverycorp.com

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